

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1947 - 1948

August 12, 1947

To Earle R. Hayes, Secretary, Employees' Retirement System

In reply to your memorandum of August 8th, which concerns the right to service retirement benefits of an employee of a participating local district, who, prior to his application for retirement, was discharged for good cause, namely the commission of a crime:

The employee at the time of discharge was 66 years of age, and the question you now ask has arisen because of the provisions of law whereby retirement is optional when the employee attains 65 years of age.

Section 5 of Chapter 60 provides in part:

"Any member in service may retire . . . upon written application to the board of trustees . . . provided that such member at the time so specified for the retirement shall have attained age 65."

It seems clear to me that under this section a person at the time of his application for retirement must be "in service," in order to qualify for the retirement benefits.

Section 1, subsection VII, defining "service," is as follows:

"'Service' shall mean service as an employee for which compensation is paid by the state." (In this case by the participating local district.)

As the applicant was not in the service of the participating local district, but had been discharged from service before any application for retirement was filed, he cannot qualify for a retirement allowance, even though he could have exercised the right before his services were terminated.

I believe that this view is supported by Section 8 of Chapter 60, which provides:

"Should a member cease to be an employee except by death or by retirement under the provisions of this chapter, he shall be paid the amount of his contributions, together with such interest thereon, not less than $\frac{1}{2}$ of accumulated regular interest, as the board of trustees shall allow; . . ."

This applicant ceased to be an employee before retirement and in accordance with the above section is entitled only to the return of his contributions.

ABRAHAM BREITBARD
Deputy Attorney General

August 12, 1947

To E. E. Roderick, Deputy Commissioner of Education
Re: Claim for Refund of Contributions to the Teachers' Retirement Association

I have carefully considered your memo of June 20th with relation to the above matter, and I also have a letter under date of July 12th from Mr. —.